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October 4, 2011

VIA ECF & FEDEX

The Honorable Patty Shwartz, U.S.M.J.
United States District Court
U.S.P.O. & Courthouse Bldg., Room 477
One Federal Square
Newark, New Jersey 07102

Re: Prometheus Laboratories Inc. v. Roxane Laboratories, Inc.
Civil Action No. 11-230 & 11-1241 (FSH)(PS)

Dear Judge Shwartz:

This firm, together with Jones Day, represents Plaintiff Prometheus Laboratories Inc. ("Prometheus") in the above-captioned matter.¹ Yesterday, during a telephone conversation with Your Honor's law clerk, Defendant Roxane Laboratories, Inc.'s ("Roxane") counsel, Theodora McCormick, and I were instructed to submit the following letter on behalf of the parties.

We write to request clarification of Your Honor's September 29, 2011 Order on Informal Application (D.I. 29), which was entered yesterday on the docket of Civil Action No. 11-230. The Order directed the parties to "present a joint letter not to exceed seven pages per side that addresses the unresolved disputes (if any), no later than October 11, 2011." However, paragraph 9 of Your Honor's August 30, 2011 Amended Pretrial Scheduling Order states: "Any unresolved discovery disputes (other than those that arise during depositions) must be brought before the Court no later than October 4, 2011...." Therefore, the parties seek clarification of whether the intent of the September 29 Order was to extend the October 4 deadline in the Amended Pretrial Scheduling Order. To that end, Your Honor's September 29 Order noted that "issues that may be raised by the October 4, 2011 discovery deadline are similar to those raised in the September 19, 2011 letter."

As it stands, the parties and GSK have agreed to meet and confer to attempt to resolve the outstanding disputes between Roxane and non-party GSK as well as the outstanding disputes between the parties prior to the October 21 conference that was set by the Court's September 29 Order. We are concerned, however, that there is insufficient time to meet and confer this week

¹ This firm also represents non-party GlaxoSmithKline ("GSK") with respect to the subpoenas that Defendant Roxane Laboratories, Inc. ("Roxane") served upon GSK in this matter.

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on all of these issues prior to the October 11 date set by that Order. Several attorneys are out of the office most of this week, attending depositions and meeting with clients, and will not be able to meet and confer until next week. These attorneys' schedules were taken into account when the new October 21 conference date was requested, and it was anticipated that the parties and GSK would work to eliminate as many disputes as possible prior to October 21. However, it was not anticipated by counsel that meeting and conferring would be completed by October 11.

There are also separate, unrelated disputes about which the parties have met and conferred relating to alleged deficiencies in Roxane's discovery responses to Prometheus. To the extent these issues cannot be resolved by continued meeting and conferring, Prometheus would need to submit a separate letter to the Court regarding these disputes.

Therefore, in the interest of resolving as many disputes as possible, and to thereby reduce the number of pages submitted to the Court regarding remaining unresolved discovery disputes, if any, the parties respectfully request that Your Honor allow the parties to meet and confer and to submit the following joint letters on October 18, 2011 with the following page limitations:

1. Joint letter addressing Roxane's outstanding disputes with Prometheus and GSK (no more than eight pages for Roxane and seven pages for Prometheus and GSK, fifteen pages total); and
2. Joint letter addressing Prometheus' outstanding disputes with Roxane (no more than four pages per side, eight pages total).

The above schedule would allow the parties and GSK additional, necessary time to meet and confer to resolve the outstanding disputes and to present only the remaining disputes, if any, in a more manageable form to the Court, in advance of the existing October 21, 2011 conference.

We thank Your Honor for considering this request. If the Court agrees with the above deadlines and page limitations, we respectfully request that Your Honor sign the form of endorsement provided below and have it entered on the docket.

Respectfully yours,

William C. Baton

William C. Baton

cc: All Counsel of Record (via e-mail)

SO ORDERED, this 4th day of October, 2011:

*The requested extensions granted as modified per
& page limitation parameters*
Patty Shwartz
HON. PATTY SHWARTZ, U.S.M.J.